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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 892

MANUEL ARISTEGUIETA, CONSUL GENERAL OF THE REPUBLIC OF VENEZUELA, PETITIONER

v.

FIRST NATIONAL CITY BANK OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Though not subscribing to all of the statements as to historical and current events made in the petition, the United States does join with petitioner in urging that this Court grant a writ of certiorari to the Court of Appeals for the Fifth Circuit to determine whether a judge of a United States District Court has the power to issue a subpoena at the request of the demanding government in an extradition proceeding, and whether, if such power exists, its exercise is subject to the 100-mile limitation on the service of subpoenas contained in Rule 45(e)(1) of the Federal Rules of Civil Procedure.

INTEREST OF THE UNITED STATES

The interest of the United States is not confined to the individual problem posed by this particular litigation but is broader in scope, encompassing general considerations of considerable international importance. Of primary concern is the responsibility of this Government to honor the stipulations of its treaties with friendly nations regarding the mutual extradition of fugitives, and its ability to comply faithfully with its international commitments in this regard.[1] Furthermore, the recognition by our courts of the power of compulsory process would enable the United States to expect a liberal construction of local laws when demanding the return of a fugitive from a foreign land to this country.

In addition, the treaty with Venezuela involved in this case imposes upon the United States the obligation of assisting the officers of Venezuela in an extradition proceeding "by every legal means" within the power of this Government, and imposes upon the extradition judge the duty to consider all "evidence or proof as may be deemed competent in the case" (43 Stat. 1698, 1705–1706). The United States is, of course, concerned that its obligations under this treaty be fulfilled.

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[1] As of January 6, 1959, the United States had entered into extradition treaties with 65 foreign nations and is a party to a multilateral treaty with several nations. (See Note to 18 U.S.C. 3181.) The Department of State has informed the Solicitor General that during the period 1945 through April 18, 1960, it received some 137 requests for the extradition of fugitives from treaty nations.

DISCUSSION

The Congress, in the exercise of its undoubted right to formulate procedures for the execution of extradition treaties (see *Grin* v. *Shine*, 187 U.S. 181, 191–192), has employed judicial machinery for the resolution of the initial question whether evidence establishes probable cause to support the charge by the demanding state of the criminality of the person whose extradition is sought. To this end, by statutory mandate (see, e.g., 18 U.S.C. 3184, 3189, 3190, 3191), Congress has vested authority in a judicial officer[2] to hear the evidence, make findings, and certify his conclusions, along with a copy of all the testimony before him, to the Secretary of State (18 U.S.C. 3184). The functions so delegated are precisely circumscribed by the statute. The extradition judge is not authorized to conduct a trial; he is simply empowered to hear and evaluate evidence and to decide whether there is reasonable basis for holding the accused to answer the charge of the foreign country. The judge is to decide nothing about innocence or guilt, nor does his decision carry with it the incidents of enforcement and sanction. The Secretary of State is not bound to extradite as a result of a judicial certification. And while the judicial determination of sufficiency of the evidence is necessary before the Executive may surrender the accused to the demanding nation, such certification does not have

[2] "* * * any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State * * *" (18 U.S.C. 3184).

the effect of an enforceable command. Essentially, the extradition judge is a fact-finder whose duties are (1) to establish the identity of the person whose surrender is demanded and (2) to determine if there is probable cause that one or more of the crimes specified in the treaty has been committed and, if so, whether there is probable cause to believe that the accused committed it.

It is apparent that, if it had so desired, Congress could have delegated these preliminary functions solely to the Executive, to a grand jury, or to any appropriate forum it chose—in short, Congress could have formulated any rational procedure for the determination of probable cause which it deemed consistent with the proper exercise of our international obligations. *Grin* v. *Shine*, 187 U.S. 181, 191. That Congress entrusted these crucial evidentiary duties to a judicial officer points up, we think, that it contemplated that these duties were to be performed with all the normal attributes of the judicial machinery, including the subpoena power. It is reasonable to assume that, when Congress invested a judicial officer with these critical fact-finding duties, it intended to enable him to use normal judicial powers connected with that function, for it would be strange to require a judicial officer to determine the sufficiency of the evidence to support the charge of criminality but at the same time to deny him recourse to the accepted judicial modes for properly performing that duty.

This view that the extradition judge has the subpoena power finds support in the other judicial functions which normally pertain to such a proceeding.

The judge is to decide upon the relevancy and admissibility of evidence (*Collins* v. *Loisel*, 259 U.S. 309, 317; *Charlton* v. *Kelly*, 229 U.S. 447, 461), and he resolves questions of adjournment and other questions of practice arising at the hearing (*In re Wadge*, 15 Fed. 864, 866 (S.D. N.Y.)). See also *Rice* v. *Ames*, 180 U.S. 371, 377, where this Court rejected the argument that an extradition judge lost jurisdiction by continuing the proceeding in excess of the time permitted to examining magistrates under state law, commenting:

> To hold that the commissioner is confined in the matter of continuances to the methods prescribed for justices of the peace and other magistrates of the particular State would be utterly destructive of his power in cases arising beyond the seas, where weeks might be required to obtain the attendance of witnesses, or the procurement of properly authenticated depositions for use upon the examination.

The function of the extradition judge has been analogized to that of a committing magistrate in an ordinary criminal case. Basically, both must determine whether there is sufficient evidence to hold the accused to answer the criminal charge. See *Benson* v. *McMahon*, 127 U.S. 457, 463; *Charlton* v. *Kelly*, 229 U.S. 447, 461.[4] Examining magistrates in this country have long used the power of compulsory proc-

[4] The treaty with Venezuela provides that "surrender shall take place only upon such evidence of guilt as, according to the laws of the country in which the fugitive or accused shall be found, would justify his detention and commitment for trial if the crime or offense had been committed there." Article I, 43 Stat. 1699.

ess, considering it so essential to the fulfillment of their responsibilities that its absence would prevent the adequate performance of their duties. Pursuant to the explicit provisions of 18 U.S.C. 3041, a United States judge proceeds in these preliminary examinations according to the Federal Rules of Criminal Procedure, which permit subpoenas to be served anywhere in the United States. The Federal Rules, however, do not normally confer substantive powers; they set out the procedures for the utilization in criminal cases of powers otherwise granted. This is true of the subpoena power which is an inherent attribute of the judicial apparatus, ordinarily available whenever the judge has fact-finding duties. Surely, Congress did not intend that this power be wholly denied to the extradition judge in the conduct of a proceeding of such far-reaching import and significance.

In 18 U.S.C. 3191 (Pet. App. 1, p. 3), Congress assumed the existence of the power of compulsory process in the extradition judge. That section makes provision for the summoning of witnesses on behalf of an indigent accused, and further provides that the costs incident thereto be paid in the same manner as in the case of witnesses subpoenaed in behalf of the United States. Even in the absence of this provision, it would not be in keeping with our concepts of fundamental fairness were an accused in an extradition hearing deprived of the right to secure the attendance of a witness whose testimony is essential. Similarly, to deny a sovereign nation access to the customary subpoena power of our courts in order to secure evidence bearing on the question of probable cause would be to deny the treaty nation a right always granted to the

United States in judicial proceedings and to every accused, including the accused in this proceeding.

As we have said, Congress could have designated or created any appropriate forum it desired to perform these fact-finding functions. When it delegated these functions to the judiciary,[4] it decided to use normal judicial power, including the power of a court to "issue all writs necessary or appropriate" in aid of its respective jurisdiction (28 U.S.C. 1651, Pet. App. 1, p. 3). Cf. *United States* v. *Hayman*, 342 U.S. 205, 221; *Price* v. *Johnston*, 334 U.S. 266, 281. The extradition judge is thus not barred from use of the subpoena power because of the particular restrictions of the Federal Rules of Criminal Procedure (which do not control in extradition), nor is such power confined to the limits provided by the Federal Rules of Civil Procedure for ordinary civil actions. On the contrary, where "necessary and appropriate" to effectuate these Congressionally delegated duties, subpoenas may be issued anywhere in the United States.

The extradition proceeding has no exact counterpart in our system of jurisprudence. It is a legislative creation, the purpose of which is to effectuate treaty relations with foreign nations. The United States believes that it would be inconsistent with the judge's delegated responsibility in this respect, and with the terms of the treaty with Venezuela, to deny him access to any relevant information available in the United States. It would likewise be inconsistent

[4] Article XI of the treaty affirms that "judicial functionaries shall prescribe the method of complying with the legal formalities of the country of which the extradition is requested." (42 Stat. 1704.)

with all other forms of judicial procedure to grant the existence of the judge's subpoena power on behalf of an indigent accused (18 U.S.C. 3191), or on behalf of any accused, and to deny the existence of a subpoena power on behalf of a friendly foreign sovereign desiring to bring information before the judge to aid him in the discharge of his statutory responsibility.[1]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General.
MALCOLM RICHARD WILKEY,
Assistant Attorney General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

MAY 1960.

[1] On March 9, 1960, pursuant to petitioner's motion, District Judge Mathes for the Southern District of Florida, Miami Division, issued an order permitting petitioner to take depositions of officials of the three respondent banks, subpoenas to be issued by the United States District Court for the Southern District of New York, where the banks are situated (Pet. App. 2, pp. 31–33). On March 25, 1960, the Fifth Circuit denied respondents' petition for leave to file a petition for a writ of prohibition or mandamus to vacate that order, holding that Judge Mathes' order was not contrary to the Fifth Circuit's mandate requiring that the Florida subpoenas *duces tecum* be quashed (Pet. App. 3, pp. 15–16). On May 13, 1960, Judge Ryan in the Southern District of New York denied motions to quash the New York subpoenas *duces tecum* but on May 16, 1960, he stayed the taking of the depositions until June 22, 1960. Argument on these issues in the Court of Appeals for the Second Circuit is now scheduled for June 13, 1960. The opinion and order of Judge Ryan are set forth in the Appendix, *infra*.

APPENDIX

In the United States District Court of Southern District of New York

M-8-85

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION AND THE ROYAL BANK OF CANADA TO QUASH THREE SUBPOENAS DUCES TECUM DATED MARCH 15, 1960

M-11-188

IN THE MATTER OF THE APPLICATION OF NAPOLEON DUPOUY TO QUASH TWO SUBPOENAS DUCES TECUM DATED MARCH 15, 1960

M-8-85

IN THE MATTER OF THE APPLICATION OF SILVIO GUTIERREZ TO QUASH A SUBPOENA DUCES TECUM DATED APRIL 18, 1960

RYAN, *District Judge:*

We have before us in this international extradition proceeding several motions, each addressed to the subpoena duces tecum issued by this Court to four separate banking institutions transacting business in this District, commanding them to appear in this Court to give testimony and produce records of accounts maintained with them by the defendant and others. The testimony is sought for use in the United States District Court for the Southern District of Florida, Miami Division, on

a hearing to be held on a complaint pending in that Court and filed pursuant to the Treaty of Extradition between the United States and Venezuela, 43 Stat. 1698 (1923), and the applicable extradition statute, 18 U.S.C. § 3184, by respondent, Manuel Aristeguieta, Consul General of Venezuela in Miami, on behalf of his government, the Republic of Venezuela, against Marcos Perez Jimenez, a citizen of Venezuela charged with certain financial crimes (among others) in that country. The questions of law presented are common to all motions; we have considered them simultaneously.

Motions have been made by the banks and by two depositors whose accounts are the subject of the subpoena. The First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada, all served within this District, have jointly moved in one motion to quash subpoenae served upon them. Napoleon Dupouy, a depositor of The First National City Bank of New York and of French American Banking Corporation, whose accounts with those banks are a subject of the subpoenae addressed to those banks, has separately moved to quash the subpoenas served upon these banks, in so far as they concern the record of his accounts and transactions with the banks.

Chemical Bank New York Trust Company has not moved with reference to the subpoena served upon it; however, Silvio Gutierrez, a depositor whose account is a subject of the subpoena served upon that bank, has moved to quash the subpoena.

The subpoenae issued pursuant to *Rule 45(d) F.R.C.P.* and our jurisdiction to hear and determine these motions is granted by *Rule 45(b) F.R.C.P.* which gives the "Court * * * upon motion made * * * at or before the time specified * * * for com-

pliance [authority] to quash or modify the subpoenae." Rule 45(d) is specifically made subject to Rule 45(b) when subpoenae duces tecum are involved and there is no limitation in Rule 45(b) as to which Court may grant this relief. (Cf. *Shawmut, Inc.* v. *American Viscose Corp.*, 22 F.R.D. 562; *Underwood* v. *Maloney*, 15 F.R.D. 104.) The District Court in Florida expressly recognized the authority of this Court and in effect directed that motions to quash be made returnable here (Hearing of March 7, 1960, transcript p. 335).

All of the motions challenge the power or authority of this District Court to issue subpoenae duces tecum to compel the attendance of witnesses and the production of records in a hearing on a complaint filed in an international extradition proceeding. We hold this authority to be clear and unquestionable.

The subpoenae were issued and served under an order of the District Court for the Southern District of Florida, Miami Division, entered on March 9, 1960 upon motion of the Consul General granting to him permission to resort to the deposition procedure of Rules 26 and 45 and related provisions of the Federal Rules including procedure for subpoenae duces tecum. These subpoenae directed to the banks were originally made returnable on April 18, 1960; and an additional subpoena served on the Chemical Bank of New York, along with a notice to take its deposition, was made returnable on May 10, 1960.

Before this, The First National City Bank, French American Banking Corporation and The Royal Bank of Canada had been served with subpoenae duces tecum issued by the Clerk of this Court to appear for the taking of their depositions in New York. On November 12, 1959, The First National City Bank moved in the District Court of Florida for a protec-

tive order under *Rule 30(b), F.R.C.P.*, on the ground that the respondent Consul General had not complied with *Rule 15, F.R. Crim. P.* That motion was granted by a Judge of that Court, who by order of November 13, 1959, vacated the subpoenae and notices on the ground that the Federal Criminal Rules should apply to the proceeding. Later, upon petition of respondent, that Court vacated its order and entered a further order that the Court might provide for the taking of testimony by deposition and subpoena, which was premised upon the conclusion that the procedure for the examination of witnesses was not to be restricted by the Federal Rules, and that under the provisions of the Treaty the right to subpoena existed.

Following a hearing before Judge Mathes, the respondent, Consul General, filed a motion pursuant to Section 3184, Title 18, U.S.C., and under the Treaty for an order, in the nature of a subpoena, requiring the banks to appear and to produce in the Florida District Court the documents which had been sought by the prior subpoenae. The Court issued such an order and subpoenae were served by the Marshal of the District Court of Florida upon the banks here in New York.

On December 14, 1959, all the movants here moved to quash the subpoenae; the motion was denied but the subpoenae were modified in respects not here important. An appeal was taken by the banks and these two depositors (among others) from this order denying petitioners' motion, on the grounds that the Court had no power to issue subpoenae in an extradition proceeding and in any case no power to issue subpoenae to be served on persons residing beyond 100 miles from the Court's situs. The United States on this appeal filed a brief amicus curiae urging the

Court's power to issue compulsory process in extradition proceedings. On February 1, 1960, the Court of Appeals for the Fifth Circuit (Chief Judge Rives, dissenting) concluded that the District Court's order should be vacated and the subpoenae quashed.

On March 7, 1960, respondent, Consul General, moved to take depositions of these banks pursuant to subpoenae duces tecum calling anew for the production of the documents as in the prior subpoenae. Judge Mathes held that the order of the Court of Appeals was limited to the question of the power of the District Court to issue subpoenae returnable before it served on persons residing beyond 100 miles, and that under the Treaty and the extradition statute, unwilling witnesses could be compelled to give evidence within the territorial limitations provided by the Civil Rules. Judge Mathes granted the relief sought and specifically reserved to the Court in this District all matters concerning the scope of the subpoenae and depositions and even the question of a stay of the subpoenae. Judge Mathes made it clear that he was granting permission simply to secure and serve the subpoenae requested. The subpoenae have been issued by the Clerk of this Court.

We should also note that the banks and depositor Dupouy petitioned the Court of Appeals of the Fifth Circuit for a writ of prohibition or mandamus to vacate this order urging that Judge Mathes acted in contravention of the prior order of vacatur of the Court of Appeals. On March 25, 1960, the Court of Appeals denied the petition, stating that the propriety of the action of the District Court "was not before this Court nor decided by it and is not contrary to the mandate." Since that time the depositor Gutierrez, after an unsuccessful attempt in the District Court of Florida to quash the notice of deposition

and subpoena duces tecum served on the Chemical Bank, has filed an appeal to the Court of Appeals in the Fifth Circuit.

On the motions now before this Court, the same objections as those urged in the Court of Appeals are again urged.

The final complaint filed herein alleges the commission by the defendant of crimes in Venezuela by a citizen of that country in violation of its penal laws. The complaint meets the statutory requirements of Section 3184, Title 18, United States Code, and charges the defendant with the commission of crimes for which extradition may be requested under the Extradition Treaty with Venezuela. The jurisdiction of the District Court in Florida to proceed under the provisions of Section 3184, Title 18, United States Code, is not questioned on these motions. That Court has a proper complaint before it; the defendant has been found within its territorial jurisdiction and he has been apprehended and brought before it "to the end that the evidence of criminality may be heard and considered." The depositions sought to be taken on the return of the subpoenae now before us and the documents and records sought to be produced, the requesting Government represents, will be "evidence of criminality" it intends to submit in support of extradition and of its pending complaint.

Section 3184 provides that if the Judge before whom the alleged fugitive is brought, after hearing, "deems the evidence sufficient to sustain the charge under the provisions of the proper treaty," he is to certify his finding, with the record, to the Secretary of State; thereupon, on proper requisition, the Secretary of State may surrender the accused to the foreign government.

Article I of the Treaty with Venezuela provides that surrender of the alleged fugitive may be made "only upon such evidence of guilt as, according to the laws of the country in which the fugitive or accused shall be found, would justify his detention and commitment for trial if the crime or offense had been committed there." 43 Stat. 1698, 1699. Article XI of the Treaty provides that the evidence submitted at the hearing may include the depositions upon which the warrant of arrest issued and other competent evidence, and that the "judicial functionaries shall prescribe the method of complying with the legal formalities of the country of which the extradition is requested." 43 Stat. 1698, 1704.

The functions and duties of the District Judge before whom the complaint is pending and will be heard are somewhat comparable to those of a committing magistrate; he will not, of course, adjudge the guilt or innocence of the alleged fugitive of the crimes charged by the requesting country, but he, after hearing, shall act if "he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention." (Section 3184) *Charlton* v. *Kelly,* 229 U.S. 447; *Orteiza y Cortes* v. *Jacobus,* 136 U.S. 330, 334–335.

The District Court here functions in a judicial capacity; he is charged with the making of a judicial determination. In accordance with our fundamental concepts of justice and of due process, he must hold public hearings; the accused must be given due notice of the hearings and be afforded full opportunity to be heard, with limitation only as to the issues presented for determination. Neither the District Judge, nor this Court which acts only in an ancillary capacity, is bound by either the federal criminal or

civil rules when they are found to be in conflict with the terms of the treaty or of Section 3184.

There is no limitation or requirement in the statute or the Treaty that the other competent proof or evidence referred to in Article XI be in possession of respondent, Consul General, at the time of the filing of the complaint, or that it have been obtained by him in the demanding country; and he is free to present other evidence available to him in the asylum state. It is certainly contemplated that the proof submitted on the hearing by a requesting sovereign, in addition to the documents and foreign underlying depositions, may well include the oral and written testimony of witnesses; for, again, there is no limitation.

We see, therefore, no justification for limiting respondent to the testimony of willing witnesses and precluding the obtaining of this same evidence when the witnesses are unwilling, or because of the inability of the hearing magistrate to compel appearance personally before him. Certainly the power to compel such attendance is explicitly assumed in Section 3191 on behalf of an indigent defendant. It can not be argued logically that it ceases to exist when it is the complainant who seeks to invoke it, or an accused with means. It follows that, if the Court has the power to order the testimony of witnesses within its reach, it can order this same testimony when the witnesses are beyond its territorial reach. As the District Judge observed when granting the application to take these depositions, it would not be practical to so limit extradition hearings under Section 3184.

It is the asylum state which dictates the legal formalities to be complied with by the respondent. It does not make for justice to hold that the hands

of the "judicial functionaries" are so tied while the burden of establishing probable cause to the satisfaction of the Judge is cast on respondent and, at the same time, that he is precluded from applying the ordinary procedures made available by the asylum state. Article XI.

Although the District Court gave respondent permission to invoke Rules 26 and 45, F.R.C.P., and related rules of discovery, it is clear from the record before it, from the affidavits submitted in support of the subpoenae and from the subpoenae themselves that respondent's right is limited to the presentation of relevant and material probative evidence in support of its charge of embezzlement and criminal malversation. Neither that Court nor this one holds that, in order to fulfill the statute and the Treaty, we are to accord respondent the limitless right of sweeping discovery afforded our litigants by our civil rules in the hope of discovering evidence to support its complaint, or that the process of this Court may be used in this proceeding solely to investigate whether a crime charged was committed in a foreign country.

The materiality and relevancy of the evidence sought and its probable existence in the hands of the banks in question was demonstrated by the extradition documents, respondent's affidavit and the oral hearing before the District Court to the satisfaction of that Court which described it as evidence "to show that certain funds were taken out of the country, namely, the Republic of Venezuela, and brought to this country and channeled back to the defendant for his use and benefit."

Just as an indigent accused's right to obtain and summon evidence and proof is circumscribed by Section 3191 in that he must show what he "expects to prove", the materiality of the evidence, and his need

of it on the hearing (*Orteiza y Cortes* v. *Jacobus, supra*) so is the respondent's right limited. But it is clear that if a right exists on the part of an accused to explain ambiguities or doubtful elements in the prima facie case made against him and to have witnesses produced for the purpose of explaining matters referred to by the witnesses for the accuser (*Collins* v. *Loisel*, 259 U.S. 309; *United States* v. *Whitem*, Fed. Cases #16, 685, 28 Fed. Cas. 588), a concomitant right must exist on the part of the accuser to have witnesses for the purpose of explaining away ambiguities or doubts on the issue of the commission of the crime and the defendant's implication in it.

It is not for this Court or for movants to question whether in fact respondent has in his possession now more than sufficient proof to meet the requirements of probable cause, or whether he is in fact simply seeking to place on record additional evidence for ultimate use on the trial in Venezuela. He has not rested his case and the Court, which is to finally determine the weight and effectiveness of the respondent's evidence, has given him permission to gather this particular evidence for presentation in the extradition proceeding. That is a matter solely within the discretion of that Court, which in extradition hearings is to be given wide latitude unhampered by formal rules. *Charlton* v. *Kelly, supra.*

A proper interpretation of our obligations under a covenant willingly entered into to assist another friendly nation in furthering the ends of justice, as conceived and adhered to by civilized nations, will fulfill the purpose and underlying philosophy of our Government and people to a greater extent than will

a technical attitude whereby our assistance is grudgingly extended.

We conclude that under Section 3191 of the Statute and Articles I and XI and on the record the District Court had the power to issue the subpoenae before us.

The motions to quash are, therefore, denied.

Extradition proceedings have been repeatedly compared with preliminary commitment proceedings. *Charlton* v. *Kelly, supra; Benson* v. *McMahon,* 127 US 457 (1888); and have many of the indices of a criminal proceeding. *Rice* v. *Ames,* 180 US 371; *Green* v. *Shine,* 187 US 181. We feel that defendant has a right to be present and represented by counsel at any public proceeding held by this Court. (Cf. *Rule 43 of the Rules of Criminal Procedure.*) Defendant has the permission of the Florida District Court to "go to the place, and be in attendance, at the taking of each such deposition" (Order of March 9, 1960).

Since both Rule 30(d) F.R.C.P. and Judge Mathes' order of March 9th empower this Court to limit and control the taking of these depositions and in order to facilitate and expedite these hearings, a Judge of this Court should preside at all hearings.

Therefore, the Consul General shall enter an order incorporating the procedure outlined above scheduling dates acceptable to all parties and arranging hearings before us in a courtroom within this District.

Settle order on notice.

Dated: May 13, 1960.
Filed: May 13, 1960.

/s/ SYLVESTER J. RYAN, *U.S.D.J.*

In the United States District Court of Southern District of New York

M-8-85

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL CITY BANK OF NEW YORK, FRENCH AMERICAN BANKING CORPORATION AND THE ROYAL BANK OF CANADA TO QUASH THREE SUBPOENAS DUCES TECUM DATED MARCH 15, 1960

M-11-188

IN THE MATTER OF THE APPLICATION OF NAPOLEON DUPOUY TO QUASH TWO SUBPOENAS DUCES TECUM DATED MARCH 15, 1960

M-8-85

IN THE MATTER OF THE APPLICATION OF SILVIO GUTIERREZ TO QUASH A SUBPOENA DUCES TECUM DATED APRIL 18, 1960

ORDER DENYING MOTIONS TO QUASH SUBPOENAS

The Application of The First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada to quash three subpoenas duces tecum dated March 15, 1960, having come on by motion to be heard before the Court on April 14, 1960; the Application of Napoleon Dupouy to quash the two subpoenas duces tecum dated March 15, 1960, directed to The First National City Bank of New York and French American Banking Corporation, having come on by Order to Show Cause to be heard before this Court on April 14, 1960, together with the Application by the three banks; by order of Chief Judge Ryan dated April 20, 1960, both Applications having been submitted on briefs and further

argument continued to await directions of Chief Judge Ryan; the Application of Silvio Gutierrez, dated April 21, 1960, to quash a subpoena duces tecum dated April 18, 1960, directed to the Chemical Bank New York Trust Company having been assigned to Chief Judge Ryan for consideration with the aforementioned Applications and having been submitted on briefs; the deposition dated fixed in the subpoenas directed to The First National City Bank of New York, French American Banking Corporation and The Royal Bank of Canada having been April 18, 1960 and by order of Chief Judge Ryan dated April 20, 1960, having been continued to May 10, 1960; the deposition date fixed in the subpoena directed to the Chemical Bank New York Trust Company having been May 10, 1960; on application of Silvio Gutierrez, the deposition of Chemical Bank New York Trust Company having been stayed by the Court, and the other depositions having been postponed by acquiescence of the parties, pending decision by the Court and entry of a final order in the above-entitled applications; and a further hearing herein having been held on May 13, 1960, counsel for all parties making the above-entitled applications having been present, it is

ORDERED that the above-entitled applications are denied for the reasons set forth in the opinion of the Court dated May 13, 1960;

ORDERED that the time for taking the depositions of The First National City Bank of New York, French American Banking Corporation, The Royal Bank of Canada and Chemical Bank New York Trust Company by the officials designated in and pursuant to the aforesaid subpoenas duces tecum is hereby continued to June 22, 1960, on which day said banks shall appear at 10:00 A.M. in Room 129 at the

United States Courthouse, Foley Square, New York, New York, prepared to give testimony and to produce the documents and things set forth in the schedule attached to the respective subpoenas served on them;

ORDERED that a Judge of this Court shall preside over the taking of the aforesaid depositions and all hearings and proceedings in connection therewith;

ORDERED that Marcos Perez Jimenez, the defendant in the extradition proceeding now before the Honorable Judge William C. Mathes sitting by special assignment in the United States District Court for the Southern District of Florida, and his counsel are permitted to attend all of the aforesaid proceedings and depositions; and

ORDERED that the application of counsel for all parties making the above-entitled applications for a stay of proceedings pursuant to the aforesaid subpoenas until an appeal is taken and/or during the pendency of any such appeal is hereby denied.

Dated: May 16, 1960.

/s/ SYLVESTER J. RYAN,
Chief Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1960